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GOVERNOR

STATE OF MAINE
DEPARTMENT OF CONSERVATION
LAND USE PLANNING COMMISSION
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GREENVILLE, MAINE
04441

WALTER E. WHITCOMB
COMMISSIONER

PERMIT

UTILITY LINE PERMIT ULP 452

The staff of the Maine Land Use Planning Commission, after reviewing the application and supporting documents submitted by the Harrison 2012 Delaware Dynasty Trust and OFLC, Inc., finds the following facts:

1. Applicant: The Harrison 2012 Dynasty Trust
c/o William B. Harrison
270 Park Avenue, 28th Floor
New York, NY 10017
2. Applicant: OFLC, Inc.
c/o Karen Confalone, President
PO Box 415
Rye Beach, NH 03871
3. Agent: Rodney Folsom
PO Box 512
Greenville, Maine 04441
4. Date of Completed Application: May 27, 2015
5. Location of Proposal: Big Moose Township, Piscataquis County
Plan 01, Lot 2.1 (Part of); Plan 01 Lots 2.13 & 2.14
6. Zoning: (M-GN) General Management Subdistrict
(P-FW) Fish and Wildlife Protection Subdistrict
(P-GP) Great Pond Protection Subdistrict
(P-WL1) Wetlands of Special Significance Protection Subdistrict

Background

7. On July 28, 2008, an application was submitted for William Harrison for the installation of approximately 6,000 feet of overhead utility line to provide telephone and electric service for future single family detached residential homes within the subject property (ULP 445). The proposed utility line would run along a road constructed by OFLC, Inc. and cross a privately owned railroad line before terminating on the waterfront peninsula. That application was placed on hold while waiting for additional information and for resolution of issues regarding the construction of the road through P-FW and P-WL1 Subdistricts without the appropriate approvals.
8. On June 18, 2014, the application ULP 445 was returned since it remained deficient and the issues regarding the road remained unresolved.

9. On August 12, 2014, the Maine Forest Service issued an After-the-Fact Land Management Road Construction Permit RP 14002, which approved the road constructed through the P-FW and P-WL1 Subdistricts.
10. On February 4, 2015, a Utility Line Permit Application was resubmitted for approximately 6,000 feet of overhead utility line to provide telephone and electric service to the properties located on the peninsula. The proposed utility line would be installed along the road approved by the Maine Forest Service, RP 14002.

Proposal

11. The applicant proposes to install approximately 6,000 feet of overhead utility line along an existing land management road to provide telephone and electric service to the properties located on the waterfront peninsula. Approximately 26 poles installed approximately 250 feet apart would support utility lines approximately 32 feet above the ground. The 40' tall poles would be installed within the shoulder of a land management road, approximately 10 feet from the edge of the travel way. The overhead utility line would cross the privately owned railroad tracks in order to extend into the waterfront peninsula. The route of the proposed utility line would be located within easements across lands owned by: a) OFLC, Inc., (Plan 01, Lot 2.1, b) Central Maine & Quebec Railway (formerly Montreal, Maine & Atlantic Railway, LTD) and c) Harrison 2012 Delaware Dynasty Trust (Plan 01, Lots 2.13(Parcel A) & 2.14(Parcel E)). The easements are shown as "Easement Areas A & B" and "Proposed Easement for all purposes including Ingress, Egress, and Utilities over Land of Montreal, Maine & Atlantic Railway, LTD" on the "Boundary Survey Prepared for the Conveyance of Land By: OFLC, Inc." prepared by Sackett & Brake Survey, Inc. dated June 13, 2008.

Agency Review Comments

12. The Department of Inland Fisheries and Wildlife has surveyed the P-FW #080437 and determined that the P-FW is very small and has not had deer in it for possibly over 20 years, so its long term value to wintering deer is very limited. A copy of this application was sent to the Department of Inland Fisheries and Wildlife.
13. The Maine Forest Service issued an After-the-Fact Permit RP 14002 on August 12, 2014 for the land management road that provides the route for the proposed utility line. A copy of the application was sent to the Maine Forest Service.

Review Criteria

14. Under provisions of Section 10.02 210 of the Commission's Land Use Districts and Standards, Utility Facilities are structures normally associated with public utilities including electric power transmission and distribution lines.
15. Under provisions of Section 10.22A(M-GN)3,c,(23) of the Commission's Land Use Districts and Standards, Utility Facilities are uses may be allowed upon issuance of a permit.
16. Under provisions of Section 10.23,(P-FW)D,3,c,(12) of the Commission's Land Use Districts and Standards, Utility Facilities are uses that may be allowed upon issuance of a permit.

17. Under provisions of Section 10.23,(P-WL)N,3,d,(9) of the Commission's Land Use Districts and Standards, Utility Facilities are uses that may be allowed by special exception upon issuance of a permit.
18. Under provisions of Section 10.25,P of the Commission's Land Use Districts and Standards, Wetland Alterations for Uses Requiring a Permit and Special Exceptions in Section 10.23,N,3 must meet the standards of this section.
19. The facts are otherwise as represented in Utility Line Permit Application ULP 452 and supporting documents.

Based upon the above Findings and information provided by the applicant, the staff concludes that:

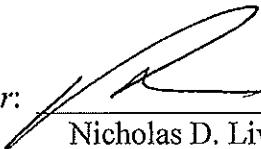
20. The locations for the approximately 26 utility poles that will be installed for the proposed utility line will be within uplands and/or within wetlands that have been filled for the construction of the land management road authorized by After-the-Fact Permit RP 14002 issued by the Maine Forest Service (MFS) on August 12, 2014. The applicant does not propose to install any utility poles in land that would currently function and / or meet the definition of a wetland. However, a portion of the project area that includes the land management road, remains zoned P-WL1, Wetland the Wetlands of Special Significance. Pursuant to Section 10.23,N,3,d,(9), there must be no alternative site which is suitable and reasonably available, and proposed utility line must be buffered from uses or resources within the subdistrict with which it is incompatible. Pursuant to Section 10.25,P, any wetland alterations would need to meet the requirements of this section. Since no additional wetland area will be disturbed beyond the area previously disturbed for the land management road, there would be no new impacts to areas that function as wetlands by the proposed installation of utility poles through the existing fill for the road. A pole supported utility line would not be incompatible with the surrounding uses where it crosses through the wetlands along an existing road. Additionally, there is no alternative site or route that would offer the same "no impact" to the wetland area that needs to be crossed to complete the proposed utility line. The installation of utility poles within the filled area that the MFS approved for the construction of the land management road would have no additional impacts to the wetlands area that needs to be crossed for the utility line. Therefore, the proposed utility line is consistent with uses requiring a permit by Special Exception within the P-WL1, Wetlands of Special Significance Subdistrict and it meets the applicable standards of Section 10.25,P for Wetland Alterations, for uses requiring a permit and Special Exceptions.
21. Based on the comments from the Department of Inland Fisheries and Wildlife, the area zoned as a deer wintering area is very small and has not had deer in it for possibly over 20 years, so its long term value to wintering deer is very limited. Therefore, the proposed installation of the utility line would not adversely impact an area that is currently functioning as a deer wintering area.
22. The proposed activities would meet the applicable sections of the Commission's Land Use Districts and Standards.
23. If carried out in compliance with the Conditions below, the proposal will meet the Criteria for Approval, Section 685-B(4) of the Commission's Statutes, 12 M.R.S.A.

Therefore, the staff approves the application of the Harrison 2012 Dynasty Trust and OFLC, Inc. with the following conditions:

1. The Standard Conditions for Utility Line Permits (ver. 2/92), a copy of which is attached.
2. The Standards for Vegetation Clearing (10.27,B), a copy of which is attached.
3. Utility poles must not be installed within the stream channels.
4. Approval of this utility line is for the expressed purpose of transmitting power to the properties that are members of the Moosehead Lake Point Road Association. Any extension or change of use will require approval from the Commission.
5. Forested vegetation adjacent to the utility line shall be managed to screen the utility line from view and the heights of the utility poles shall be the minimum needed for safe electric power transmission.
6. All areas of disturbed soil must be promptly reseeded and stabilized with mulch, and maintained in a vegetated state to prevent soil erosion. In areas where re-vegetation is not initially successful, additional measures to control erosion and sedimentation shall be undertaken as often as necessary to be effective.
7. Should any erosion or sedimentation occur during construction, the permittee shall contact the Land Use Planning Commission immediately, notifying it of the problem and describing all proposed corrective measures.

This permit is approved upon the proposal as set forth in the application and supporting documents, except as modified in the above stated conditions, and remains valid only if the permittee complies with all of these conditions. Any variation from the application or the conditions of approval is subject to prior Commission review and approval. Any variation undertaken without Commission approval constitutes a violation of Land Use Planning Commission law. In addition, any person aggrieved by this decision of the staff may, within 30 days, request that the Commission review the decision.

DONE AND DATED AT GREENVILLE, MAINE, THIS TWENTIETH DAY OF JULY, 2015.

for:  Nicholas D. Livesay, Executive Director



STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
22 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0022

STANDARD CONDITIONS OF APPROVAL FOR UTILITY LINE PERMITS:

1. The permit certificate must be posted in a visible location on your property during development of the site and construction of the structures approved by this permit.
2. This permit is limited to the proposal as set forth in the application and as modified by these and any other specified conditions of approval. All variances therefrom are subject to the review and approval of the Commission. Any variance from the application or the conditions of approval undertaken without the review and approval of the Commission constitutes a violation of the Land Use Planning Commission Law.
3. The permittee shall secure and comply with all applicable licenses, permits and authorizations of all federal, state and local agencies, with particular regard to those regulations of the Maine Department of Environmental Protection, Maine Department of Inland Fisheries and Wildlife, and the Maine Department of Human Services.
4. The permittee shall promptly submit all information requested by the Commission demonstrating compliance with the terms of the application and all of the conditions of approval.
5. The scenic character and healthful condition of the area covered by this permit must be maintained. The area must be kept free of litter, solid wastes, junk vehicles and vehicle parts, and any other materials that may constitute a hazardous or nuisance condition.
6. All disturbed areas of soil shall be promptly revegetated and maintained in a vegetative state so as to blend with the natural surroundings and prevent soil erosion.
7. Once construction is complete, the permittee shall notify the Commission that all requirements and conditions of approval have been met. The permittee shall submit all information requested by the Commission demonstrating compliance with the terms of the application and the conditions of approval. Following notification of completion, the Commission's staff may arrange and conduct a compliance inspection.
8. Construction activities permitted in this permit must be substantially started within two years of date of issue and substantially completed within five years from date of issuance of this permit. If such construction activities are not begun and completed within this time limitation, this permit shall lapse and no activities shall then occur unless and until a new permit has been granted by the Commission.

*Adopted January 8, 1976
Revised 09/84
Revised 02/92
Revised 04/04*

B. VEGETATION CLEARING

Vegetation clearing activities not in conformance with the standards of this section may be allowed upon issuance of a permit from the Commission provided that such types of activities are allowed in the subdistrict involved. An applicant for such permit shall show by a preponderance of the evidence that the proposed activity, which is not in conformance with the standards of this section, shall be conducted in a manner which produces no undue adverse impact upon the resources and uses in the area.

The following requirements shall apply to vegetation clearing activities for any purpose other than road construction, road reconstruction and maintenance, wildlife or fishery management, forest management, agricultural management, public trailered ramps or hand-carry launches:

1. A vegetative buffer strip shall be retained within:
 - a. 50 feet of the right-of-way or similar boundary of any public roadway,
 - b. 75 feet of the normal high water mark of any body of standing water less than 10 acres in size, or any tidal water or flowing water draining less than 50 square miles, and
 - c. 100 feet of the normal high water mark of a body of standing water 10 acres or greater in size or flowing water draining 50 square miles or more.
2. Within this buffer strip, vegetation shall be maintained as follows:
 - a. There shall be no cleared opening greater than 250 square feet in the forest canopy as measured from the outer limits of the tree crown. However, a footpath is permitted, provided it does not exceed six (6) feet in width as measured between tree trunks, and, has at least one bend in its path to divert channelized runoff.
 - b. Selective cutting of trees within the buffer strip is permitted provided that a well-distributed stand of trees and other natural vegetation is maintained.

For the purposes of this section a "well-distributed stand of trees" adjacent to a body of standing water 10 acres or greater in size shall be defined as maintaining a rating score of 24 or more in a 25-foot by 50-foot rectangular area as determined by the following rating system.

Near other water bodies, tributary streams and public roadways a "well-distributed stand of trees" shall be defined as maintaining a rating score of 16 or more per 25-foot by 50-foot (1250 square feet) rectangular area as determined by the following rating system.

Diameter of Tree at 4-1/2 feet Above Ground Level (inches)	Points
2.0 to < 4.0	1
4.0 to < 8.0	2
8.0 to < 12.0	4
12.0 +	8

Table 10.27,B-1. Rating system for a well-distributed stand of trees.

The following shall govern in applying this rating system:

- (1) The 25-foot x 50-foot rectangular plots shall be established where the landowner or lessee proposes clearing within the required buffer;
- (2) Each successive plot shall be adjacent to but not overlap a previous plot;
- (3) Any plot not containing the required points shall have no vegetation removed except as otherwise allowed by these rules;
- (4) Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by these rules; and
- (5) Where conditions permit, no more than 50% of the points on any 25-foot by 50-foot rectangular area may consist of trees greater than 12 inches in diameter.

For the purposes of this section, "other natural vegetation" is defined as retaining existing vegetation under 3 feet in height and other ground cover and retaining at least 5 saplings less than 2 inches in diameter at 4½ feet above ground level for each 25-foot by 50-foot rectangular area. If 5 saplings do not exist, the landowner or lessee may not remove any woody stems less than 2 inches in diameter until 5 saplings have been recruited into the plot. In addition, the soil shall not be disturbed, except to provide for a footpath or other permitted use.

- c. In addition to Section 10.27,B,2,b above, no more than 40% of the total basal area of trees 4.0 inches or more in diameter, measured at 4½ feet above ground level, may be removed in any ten (10) year period.
 - d. Pruning of live tree branches is prohibited, except on the bottom 1/3 of the tree provided that tree vitality will not be adversely affected.
 - e. In order to maintain a buffer strip of vegetation, when the removal of storm-damaged, diseased, unsafe, or dead trees results in the creation of cleared openings in excess of 250 square feet, these openings shall be established with native tree species.
3. At distances greater than one hundred (100) feet, horizontal distance, from the normal high water mark of a body of standing water greater than 10 acres, no more than 40% of the total basal area of trees four inches or more in diameter, measured at 4½ feet above ground level, may be removed in any ten (10) year period. In no instance shall cleared openings exceed, in the aggregate, 10,000 square feet, including land previously cleared. These provisions apply to areas within 250 feet of all bodies of standing water greater than ten (10) acres, and to the full depth of the P-AL zone. This requirement does not apply to the development of uses allowed by permit.
 4. Cleared openings legally in existence as of June 7, 1990 may be maintained, but shall not be enlarged except as permitted by these regulations.
 5. When revegetation is required: (i) in response to violations of the vegetation standards set forth in Section 10.27,B,1 through 4; (ii) to address the removal of non-native invasive species of vegetation; (iii) as a mechanism to allow for development by permit that exceeds the vegetation standards of Section 10.27,B or the cleared opening standards of Section 10.27,Q,1, Table A,(4), including removal of vegetation in conjunction with a shoreline stabilization project; or (iv) as part of a mitigation plan for clearing associated with a recreational lodging facility, the revegetation must comply with the following requirements.

- a. The property owner must submit a revegetation plan, prepared with and signed by a qualified professional (examples include: arborist, forester, landscape architect, U.S.D.A. Natural Resources Conservation Service), that describes revegetation activities and maintenance. The plan must include a scaled site plan depicting where vegetation was, or is to be removed, where existing vegetation is to remain, and where vegetation is to be planted, including a list of all vegetation to be planted.
- b. Revegetation must occur along the same segment of shoreline and in the same area where vegetation was removed and at a density comparable to the pre-existing vegetation, except where a shoreline stabilization activity does not allow revegetation to occur in the same area and at a density comparable to the pre-existing vegetation, in which case revegetation must occur along the same segment of shoreline and as close as possible to the area where vegetation was removed. When part of a mitigation plan, revegetation must occur along the same segment of shoreline, road, or other resource affected by proposed uses or development, and at a density and configuration comparable to other naturally occurring forests on the site or in the vicinity.
- c. Revegetation activities must meet the following requirements for trees and saplings:
 - (1) All trees and saplings removed must be replaced with native noninvasive species;
 - (2) Replacement vegetation must at a minimum consist of saplings;
 - (3) If more than three trees or saplings are planted, then at least three different species shall be used;
 - (4) No one species shall make up 50% or more of the number of trees and saplings planted;
 - (5) If revegetation is required for a shoreline stabilization project, and it is not possible to plant trees and saplings in the same area where trees or saplings were removed, then trees or sapling must be planted in a location that effectively reestablishes the screening between the shoreline and structures; and
 - (6) A survival rate of at least 80% of planted trees or saplings is required for a minimum five years period from the time of planting. Replanting of trees or saplings that did not survive does not trigger a new five year period.
- d. Revegetation activities must meet the following requirements for woody vegetation and other vegetation under three feet in height:
 - (1) All woody vegetation and vegetation under three feet in height must be replaced with native noninvasive species of woody vegetation and vegetation under three feet in height as applicable;
 - (2) Woody vegetation and vegetation under three feet in height shall be planted in quantities and variety sufficient to prevent erosion and provide for effective infiltration of stormwater;
 - (3) If more than three woody vegetation plants are to be planted, then at least three different species shall be planted;
 - (4) No one species shall make up 50% or more of the number of planted woody vegetation plants; and

- (5) Survival of planted woody vegetation and vegetation under three feet in height must be sufficient to remain in compliance with the standards contained within this chapter for a minimum of five years from the time of planting. Replanting of trees or saplings that did not survive does not trigger a new five year period.
- e. Revegetation activities must meet the following requirements for ground vegetation and ground cover:
 - (1) All ground vegetation and ground cover removed must be replaced with native herbaceous vegetation, in quantities and variety sufficient to prevent erosion and provide for effective infiltration of stormwater;
 - (2) Where necessary due to a lack of sufficient ground cover, an area must be supplemented with a minimum four inch depth of leaf mulch and/or bark mulch to prevent erosion and provide for effective infiltration of stormwater; and
 - (3) Survival and functionality of ground vegetation and ground cover must be sufficient to remain in compliance with the standards contained within Section 10.27,B for a minimum of five years from the time of planting.
- f. The applicant may propose, and the Commission may approve or require, variations from the standards in Section 10.27,B,5,c through e if necessary to achieve effective buffering. The Commission may exempt an individual, whether an applicant or violator, from the requirement that the revegetation plan be prepared by a qualified professional in accordance with Section 10.27,B,5,a, when the proposed revegetation is routine and would not affect a particularly sensitive resource.